

APPENDIX A

Funding Distribution Method

I. Introduction

Federal regulation allows for Federal funds to be distributed to states and tribes through either a cooperative agreement or a grant. The Department of Energy has a choice of cooperative agreements, grants, or a combination of those when selecting a distribution method to implement Section 180(c) of the Nuclear Waste Policy Act.

The Department's policy as described in the 1998 *Section 180(c) Draft Policy and Procedures* has been that OCRWM would administer direct grants to states and tribes and the governor would designate which state agency would administer the funds. That decision had broad, although not universal, support from the TEC participants and from comments received in response to the six *Federal Register* notices on Section 180(c).

This paper describes: (1) the background information about grants and cooperative agreements; (2) the distribution methods available to DOE and the policy considerations of each option; and (3) the Topic Group's recommendations to management. The paper also discusses whether the Section 180(c) policy should designate which state agency should administer the funds.

II. Background

Grants or Cooperative Agreements

The Department of Energy has used both cooperative agreements and grants to help corridor jurisdictions prepare for shipments of other radioactive materials.

Since 1989, the Waste Isolation Pilot Plant (WIPP) has distributed its transportation planning and training funds through cooperative agreements with the State Regional Groups (SRG), which in turn distribute funds to each eligible state. The regional groups help with regional coordination of individual state projects.

Other DOE programs that have shipped radioactive materials have provided grants directly to state agencies at the state's request. These programs had limited numbers of shipments and a formal grant or cooperative agreement process was not warranted.

Federal grant programs with missions similar to the Section 180(c) program have used both grants and cooperative agreements to distribute funds. The Federal Emergency Management Agency has used cooperative agreements with each state.

Designation of State Agency

The requirements of DHS grant programs vary on designating a state agency to administer the grant. However, most allow the governor to select the state agency. A few programs allow any state agency or private organization to apply.

III. Options Considered

A. Funding Distribution Method

Option 1: Grants to States and Tribes

Considerations:

- The Department chose direct grants as the funding distribution method in the *1998 Proposed Policy*.

Strengths of this option:

- Grants present less administrative and staff burdens than cooperative agreements on both DOE and the recipients.
- Once an application has been approved, the Department's role is limited and the recipient has more flexibility in use of the funds than with a cooperative agreement and fewer record keeping and monitoring requirements.

Weaknesses of this option:

- While grants require less administration than cooperative agreements, DOE would still need to administer grants to 43 states and about 40 tribes, depending on final route selection.

Option 2: Cooperative Agreements to States and Tribes

Considerations:

- FEMA has used cooperative agreements to distribute funding and technical assistance to state, local, and tribal responders for several years.

Strengths of this option:

- Cooperative agreements require DOE to have greater interaction with recipients than do grants. This may be appropriate in some cases such as with some Indian tribes.

Weaknesses of this option:

- This option would create the greatest administrative burden on DOE and recipients because cooperative agreements generally require more communication between the Department and recipient jurisdiction to develop, interpret, and carry out a scope of work, monitor activities, and complete reporting requirements. This option has the least support among the states.

Option 3: Cooperative Agreements to State Regional Groups and Grants to Tribes

Considerations:

- DOE General Counsel has made a preliminary interpretation of the law indicating that Section 180(c) money cannot go through the SRGs to states – funding must go directly to state governments. However, General Counsel has expressed a willingness to revisit this decision when the Draft Federal Register Notice enters DOE’s concurrence process.
- Several states have expressed strong interest in receiving their Section 180(c) funds through the State Regional Groups. Proponents of funding through the SRGs question what role the SRGs will have if grants go directly to individual states. However, direct grants to states will not invalidate the SRGs’ function as a regional planning and coordinating body where appropriate for Section 180(c) implementation. Moreover, the states have requested that DOE consider funding the states’ operational activities related to OCRWM’s shipments (see Appendix J). Funds for such operational activities could flow to the SRGs in parallel to Section 180(c) funds for related regional activities such as multi-jurisdictional exercises, the provision of technical assistance, or the development of mutual aid agreements.

Strengths of this option:

- The Waste Isolation Pilot Plant (WIPP) has a successful track record of disbursing funds for training through State Regional Groups.
- The SRGs would take a percentage of the funds to cover administrative costs whereas with direct grants, each state takes a percentage, usually about 13.5% but some as high as 30%.
- The SRGs can provide a moderating influence in determining needs and prioritizing regional projects among its members, whereas grants to individual states creates a burden for the Department to negotiate with individual states.
- The small number of recipients reduces administrative costs to DOE.
- The SRGs can leverage their knowledge of individual states’ issues.
- The SRGs provide a forum for states and DOE to discuss recommended equipment (reliability, accuracy, durability, ease of operation, etc.), review training options, and for states to learn from the experience of other states in developing work plans and “lessons learned”.

Weaknesses of this option:

- Depending on General Counsel’s revisiting this issue, funding through the SRGs may not be an available option.
- If some states want direct grants from DOE, rather than receive their funds through their SRG, DOE would need to decide whether to allow multiple fund distribution methods or require all recipients to use the same fund distribution method.

- Depending on how Homeland Security Presidential Directive #8 is implemented, DOE could be required to provide direct grants to states and local governments.

B. Designation of state agency

- Option 1: Section 180(c) Policy designates the state agency:

With this approach, the Section 180(c) Policy would designate a state agency, such as the State Health, State Police, Emergency Management, or Transportation agency, as the receiving and administering agency within the state. The weakness in this option is that, with the variety of state structures, funding may not actually flow to the agency responsible for training. For example, in some states the Emergency Management agency is responsible for training emergency responders while other states give that responsibility to the State Health agency.

- Option 2: Section 180(c) Policy requests that the governor designate the state agency:

This is the approach taken by the current Section 180(c) Policy. However, there have been some concerns that the most appropriate state agency has not always been designated.

A remedy for such concerns might be to send a letter to the governor notifying the state of their eligibility and identifying the staff person and agency who was involved in helping DOE develop the Section 180(c) program and copy the staff person mentioned in the letter. That would give the governor's office some information regarding who in the state has been involved in Section 180(c) development.

Alternatively, the Section 180(c) policy could allow the governor to choose the administering agency but require that it be the agency responsible for training local public safety officials. This could create confusion since the mandate of Section 180(c) requires training for both safe routine transportation – usually highway department staff or law enforcement – and emergency response procedures – usually state and local fire fighters and emergency medical personnel. The same agencies do not usually train both types of personnel. However that could be left to the state or governor's office to settle.

- Option 3: Do not specify any state agency designation process in the Section 180(c) policy:

This approach would allow each state to address the administering state agency at their discretion. This gives the most flexibility but could result

in a state agency applying for the grants that does not have primary training authority.

IV. Recommendation to Management

The Topic Group recommends:

- DOE provide Section 180(c) funding through direct grants to states and tribes.
- DOE leave it up to the state agencies, working through their governors' offices, to designate which state agency should administer the funding.
- DOE send a letter to the governor's office notifying them of their state's eligibility for funds and mention in the letter the name and agency of the staff person from the state involved in helping DOE develop the Section 180(c) program. A copy of the letter should also be sent to the above mentioned staff person.

Considerations:

- If not for General Counsel's opinion that the State Regional Groups could not distribute Section 180(c) funds, several states in the Topic Group felt strongly that SRGs should distribute the funds to their member states, as was done with WIPP, rather than through direct grants. These states have requested – and continue to request – that DOE's General Counsel revisit this issue.
- States support the continued use of the SRGs to ensure coordination, consistency, and compatibility of shipment planning activities.
- The SRGs' role in Section 180(c) implementation will be further defined. It could be a regional planning function or a technical assistance function or a combination of these.
- The recommendation of direct grants to tribes may change now that the consultation process with tribes is underway.